

RCW 77.15.740 Protection of southern resident orca—Unlawful activities—Penalty—Signage—Outreach and education—Duties of commercial whale watching vessel. (1) Beginning January 1, 2025, except as provided in subsection (2) of this section, it is unlawful for a person to:

(a) Cause a vessel or other object to approach, in any manner, within 1,000 yards of a southern resident orca;

(b) Position a vessel to be in the path of a southern resident orca at any point located within 1,000 yards of the whale. This includes intercepting a southern resident orca by positioning a vessel so that the prevailing wind or water current carries the vessel into the path of the whale at any point located within 1,000 yards of the whale;

(c) Position a vessel behind a southern resident orca at any point located within 1,000 yards;

(d) Fail to disengage the transmission of a vessel that is within 400 yards of a southern resident orca;

(e) Cause a vessel or other object to exceed a speed greater than seven knots over ground at any point located within 1,000 yards of a southern resident orca; or

(f) Feed a southern resident orca.

(2) A person is exempt from subsection (1) of this section if that person is:

(a) Operating a federal government vessel in the course of official duties, or operating a state, tribal, or local government vessel when engaged in official duties involving law enforcement, search and rescue, or public safety;

(b) Operating a vessel in conjunction with a vessel traffic service as a vessel traffic service user established under 33 C.F.R. and following a traffic separation scheme, or complying with a vessel traffic service or captain of the port measure or direction, or complying with the rules of the road or taking actions to ensure safety. This also includes vessel transits departing the lanes for safety reasons or to approach or depart a dock or anchorage area, including support vessels escorting or assisting vessels, such as tug boats;

(c) Engaging in an activity, including scientific research or oil spill response, pursuant to the conditions of a permit or other authorization from the national marine fisheries service or the department;

(d) Lawfully engaging in a treaty Indian or commercial fishery that is actively setting, retrieving, or closely tending fishing gear. Commercial fishing vessels in transit are not exempt from subsection (1) of this section;

(e) Conducting vessel operations necessary to avoid an imminent and serious threat to a person, vessel, or the environment, including when necessary for overall safety of navigation and to comply with state and federal navigation requirements; or

(f) Engaging in rescue or clean-up efforts of a beached southern resident orca overseen, coordinated, or authorized by a volunteer stranding network.

(3) For the purpose of this section, "vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water. However, "vessel" does not include inner

tubes, air mattresses, sailboards, and small rafts, or flotation devices or toys customarily used by swimmers.

(4) (a) A violation of this section is a natural resource infraction punishable under chapter 7.84 RCW and carries a fine of five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(b) A person who qualifies for an exemption under subsection (2) of this section may offer that exemption as an affirmative defense, which that person must prove by a preponderance of the evidence.

(c) The department may choose to offer educational materials in lieu of issuing an infraction, at the officer's discretion.

(d) An officer may not issue an infraction to the operator of a vessel that is within 400 yards of a southern resident orca who has immediately disengaged the transmission of the vessel pursuant to subsection (1)(d) of this section and waits for the whale to leave the vicinity.

(5) The department must post signs at public boat launches and marinas that provide information regarding the vessel setbacks and speed limits required by this section. However, the requirements of this section apply whether or not a sign is present and the absence of a sign is not a defense to any violation of this section.

(6) The department shall conduct outreach and education regarding regulations and best practices for recreational boating in waters inhabited by southern resident orcas, including best practices for avoiding or minimizing encounters closer than 1,000 yards from a southern resident orca consistent with the recommendations of the work group established in section 6, chapter 452, Laws of 2023. This may include the advancement and proliferation of tools for notifying boaters of southern resident orca presence, identifying orca ecotypes, and estimating distance on the water.

(7) If the operator of a motorized commercial whale watching vessel enters within 1,000 yards of a group of southern resident orcas, after taking reasonable measures to determine whether the whales are southern resident orcas, and then identifies the whales as southern resident orcas, the operator must:

(a) Immediately safely reposition the vessel to be 1,000 yards or farther from the southern resident orcas; and

(b) Immediately after repositioning the vessel, report the location of the southern resident orca or orcas to the WhaleReport application for the whale report alert system, or to a successor transboundary notification system designated by the department that is adopted by the international shipping community in the Salish Sea.

(8) The operator of a motorized commercial whale watching vessel may voluntarily log the incident, including measures taken to determine whether the whales were southern resident orcas, and submit the log to the department within 24 hours of the incident. [2023 c 452 s 2; 2019 c 291 s 1; 2014 c 48 s 22; 2012 c 176 s 37; 2008 c 225 s 2.]

Effective date—2023 c 452 s 2: "Section 2 of this act takes effect January 1, 2025." [2023 c 452 s 9.]

Findings—Intent—2023 c 452: "(1) It is the intent of the legislature to support the recovery of endangered southern resident orcas by reducing underwater noise and disturbance from vessels, which is one of the three main threats to the population's recovery, along

with availability of their preferred prey, Chinook salmon, and contaminants in their food and environment. In particular, the legislature intends to protect southern resident orcas from those boaters who intentionally harass, chase, and torment the whales.

(2) The legislature further finds that the state has a compelling interest in protecting the iconic southern resident orca from extinction by acting to implement recovery activities and adaptively managing the southern resident orca recovery effort using best available science. Studies conducted by the national oceanic and atmospheric administration have indicated that southern resident orcas significantly reduced their foraging behavior when moving vessels were observed within 1,000 yards of the whale, with females being more likely than males to reduce their foraging activities when vessels were within an average of 400 yards.

(3) In 2019, the governor's southern resident orca task force produced 49 recommendations to address the three major threats to the population's recovery. While many investments have been made and implementation is ongoing, increased and sustained efforts are needed to advance salmon recovery, address water quality and contaminants in the environment, and reduce underwater noise and physical disturbance of orcas as they attempt to forage, communicate, and rest.

(4) The legislature finds that the threats to orcas are interrelated and they are inexorably linked with salmon recovery. Salmon face a diverse array of threats throughout their life cycle including the threat posed by pinnipeds, such as seals and sea lions, which are protected under federal law, but nevertheless pose a significant threat to salmon and orca recovery through ongoing and excessive predation. Salmon also face fish passage barriers, stormwater runoff, and spills from wastewater treatment plants, among other threats. It is in the best interest of all the people of Washington, including federally recognized tribes and private landowners, to increase the population of salmon and to ensure the survivability of salmon against all threats.

(5) The legislature directed the department of fish and wildlife to produce a report on the effectiveness of regulations designed to address underwater noise and disturbance from commercial whale watching and recreational vessels. The legislature received the first of three mandated reports in November of 2022, and it contained an assessment of the most recent science demonstrating the negative impact of vessels on southern resident orca foraging behavior and foraging success.

(6) While it takes time to see results from efforts to increase prey availability and reduce contaminants, reducing noise and disturbance from vessels can provide immediate support for the southern resident orcas by increasing their likelihood of successful foraging." [2023 c 452 s 1.]

Effective date—2019 c 291 s 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 8, 2019]." [2019 c 291 s 6.]

Findings—Intent—2008 c 225: "The legislature finds that the resident population of orca whales in Washington waters (*Orcinus orca*), commonly referred to as the southern residents, are enormously

significant to the state. These highly social, intelligent, and playful marine mammals, which the legislature designated as the official marine mammal of the state of Washington, serve as a symbol of the Pacific Northwest and illustrate the biological diversity and rich natural heritage that all Washington citizens and its visitors enjoy.

However, the legislature also finds that the southern resident orcas are currently in a serious decline. Southern residents experienced an almost twenty percent decline between 1996 and 2001. The federal government listed this orca population as depleted in 2003, and as an endangered species in 2005. The federal government has identified impacts from vessels as a significant threat to these marine mammals.

In 2006, after listing the southern resident orcas as endangered, the federal government designated critical orca habitat and released a proposed recovery plan for the southern resident orcas. The federal government has initiated the process to adopt orca conservation rules, but this process may be lengthy. Additionally, although existing whale and wildlife viewing guidelines are an excellent educational resource, these guidelines are voluntary measures that cannot be enforced.

Therefore, the legislature intends to protect southern resident orca whales from impacts from vessels, and to educate the public on how to reduce the risk of disturbing these important marine mammals." [2008 c 225 s 1.]

Intent—2008 c 225: "The legislature encourages the state's law enforcement agencies to utilize existing statutes and regulations to protect southern resident orca whales from impacts from vessels, including the vessel operation and enforcement standards contained in chapter 79A.60 RCW." [2008 c 225 s 3.]